

When a person joins an existing partnership "P" by contributing assets this is equivalent to the formation of a "P" and is not reportable. Withdrawal from a "P" by having the partner acquire the interest is not reportable since this is informing the P; a management agreement for the P's assets would not create a reportable acquisition. The facts in this case indicate ~~\_\_\_\_\_~~ called ~~\_\_\_\_\_~~ reasons; as a precaution, the avoidance provision of § 801.90 should also be considered in determining reportability.

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VIA HAND DELIVERY

Federal Trade Commission  
Premerger Notification Office  
Bureau of Competition  
(Attn: Mr. Victor Cohen)  
7th & Pennsylvania Avenue, N.W.  
Room 303  
Washington, D.C. 20580

JAN 30 5 01 PM '92

Re: Request for an Informal Interpretation re the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub.L. 94-435, 90 Stat. 1390 (1976) (codified as amended at 15 U.S.C. Sec. 18A) (the "HSR Act")

Dear Mr. Cohen:

We have been asked on behalf of the parties to a contemplated transaction to request an informal interpretation with respect to the application of the HSR Act to a contemplated transaction involving the transfer of assets to a general partnership in exchange for a partnership interest and the subsequent redemption by the partnership of the entire partnership interest of one of its original partners.

Proposed Transaction: Consistent with what we discussed in the conference call on January 27, 1992, among you, ~~\_\_\_\_\_~~ and me, the parties and the proposed transaction are described as follows:

1. Entities "A", "B" and "C" are each "ultimate parent entities" as defined by 16 C.F.R. §801.1(b)(3). Entities "A" and "C" each have total assets exceeding \$100 million. Entity "B" has total assets exceeding \$10 million.
2. "A" and "B" each hold a one-half partnership interest in a general partnership "X" which was formed several years ago. Partnership "X" owns assets which it has used for several years in the conduct of a business in ~~\_\_\_\_\_~~ with the fair market

value of such assets exceeding \$50 million [REDACTED]  
[REDACTED]

3. Entity "C" owns assets which it uses in the conduct of a business in [REDACTED] with the fair market value of such assets exceeding \$50 million [REDACTED]

4. The businesses which are conducted by "X" and "C" affect interstate commerce.

5. "A", "B", "C" and "X" propose to consummate the following transaction:

(a) "C" shall contribute its [REDACTED] and the business operated therewith, to "X", in exchange for which "C" shall receive a one-third partnership interest in "X", which will result in each of "A", "B" and "C" then holding a one-third partnership interest in "X".

(b) The following day, with such one-day delay occurring for tax reasons to provide "C" with a step-up in basis for the assets it contributed, "X" shall borrow \$40 million in cash and shall redeem from "B" its one-third partnership interest in "X" for a redemption price of \$40 million. Upon such redemption, "A" and "C" shall thereafter each hold a one-half partnership interest in "X", and "B" shall no longer hold a partnership interest in "X".

(c) At its option, "C" can elect to receive slightly less than a one-third partnership interest in "X" in exchange for the [REDACTED] which will, following the redemption of "B's" partnership interest in "X", result in "C" holding slightly less than a one-half partnership interest and "A" holding slightly more than a one-half partnership interest in "X".

(d) The structure of the transaction has not been adopted as a device for avoidance of the filing requirements of the HSR Act.

Statement of the questions. The above-described transaction poses two key questions:

1. Is the contribution by "C" of the [REDACTED] to "X" in exchange for up to a one-half partnership interest in "X" a reportable event under the HSR Act?

2. Is the redemption by "X" of the partnership interest held by "B" a reportable event under the HSR Act?

Application of HSR. In the conference call held on January 27, 1992, we discussed the requirements for premerger notification filings under the HSR Act as applied by the Federal Trade Commission ("FTC") to the above-described transaction. In our conference call, you explained that the FTC does not view partnership interests as being either assets or voting securities, that upon the initial formation of a partnership, the FTC does not deem each "ultimate parent entity" of the partnership to have acquired the assets contributed by the other partners, and that at the time of the initial formation of a partnership the partners' contributions of capital to the newly formed partnership are generally not reportable. You explained that in the above-described transaction the FTC would not view the transfer of the [REDACTED] by "C" to "X" as an acquisition of such assets by "A" and/or "B", which are the "ultimate parent entities" of "X" prior to the admission of "C". Instead, the FTC would view the contribution of the [REDACTED] by "C" to "X", in return for a partnership interest in "X", to be a reformation of "X" which, as would be the case in an initial formation of a partnership, would not be a reportable event. Because partnership "X" has conducted business for several years and "B" has been a partner in "X" since its inception, the transaction does not raise the question of any contribution by "B" of assets to the partnership for which it concurrently receives cash from another partner in connection with the formation of the partnership. Consequently, the contribution by "C" of the [REDACTED] to "X" in exchange for up to a one-half partnership interest in "X" is not a reportable event under the HSR Act.

With regard to the second question, whether the redemption of the partnership interest of "B" is reportable, you explained that the FTC takes the position that an acquisition or transfer of less than all or substantially all of the interests in a partnership is not a reportable event because the FTC does not view the acquisition or transfer of less than all or substantially all of a partnership's interests to be an acquisition of either assets or voting securities within the meaning of the FTC's rules. Consequently, the redemption by "X" of the partnership interest held by "B" is not a reportable event under the HSR Act.

With reference to the above-described factual situation, please confirm whether the conclusions set forth in the preceding two paragraphs correctly interpret the application of the HSR Act and the FTC's rules in the above-described factual circumstances.

Additional Aspect of the Proposed Transaction. In our telephone conference on Monday we did not discuss the following additional aspect of the proposed transaction. Assuming all the other facts to be the same as described above, please consider the following additional fact:

Partners "A" and "C" have agreed that subsequent to the redemption of the partnership interest of "B", "A" shall manage on behalf of "X" the operation of the business conducted using the [REDACTED] and "C" shall manage on behalf of "X" the operation of the business conducted using the [REDACTED]. Ownership of the [REDACTED] and the [REDACTED] shall continue to reside with partnership "X". "A" and "C" will each receive a nominal management fee of \$100 for their services in managing the [REDACTED] and the [REDACTED] respectively. The net income or net loss from the operations of the [REDACTED] and the [REDACTED] will be combined and allocated to "A" and "C" in accordance with their respective partnership percentages in "X".

If the conclusions set forth in the preceding section of this letter correctly interpret the FTC's application of the HSR Act and its rules to the initially described factual circumstances, please let us know whether those conclusions are affected by the additional fact set forth above.

Please contact the undersigned if you have any questions on the facts or the informal interpretations being requested, and when you wish to discuss the FTC's conclusions after the FTC has completed its review. Thank you for your attention to this matter.

Very truly yours,

cc: [REDACTED]